

Zhang (Migration) [2022] AATA 1817 (28 March 2022)

DECISION RECORD

DIVISION: Migration & Refugee Division

APPLICANTS: Ms Lixia Zhang
Mr Xiangchen Zhai
Mr Boyan Zhai
Mr Boyuan Zhai

REPRESENTATIVE: Mr Liang Lu (MARN: 0848726)

CASE NUMBER: 2109993

HOME AFFAIRS REFERENCE(S): BCC2019/5520363

MEMBER: Michelle East

DATE: 28 March 2022

PLACE OF DECISION: Perth

DECISION: The Tribunal affirms the decision to cancel the first named applicant's Subclass 186 - Employer Nomination Scheme visa.

The Tribunal has no jurisdiction with respect to the other applicants.

Statement made on 28 March 2022 at 2:10pm

CATCHWORDS

MIGRATION – cancellation – Employer Nomination (Permanent) (Class EN) Visa – subclass 186 – TOEFL iBT Test Report Form was considered to be bogus – applicant provided incorrect information – applicant did not sit the English test – applicant provided the incorrect information and bogus document intentionally – decision under review affirmed

LEGISLATION

Migration Act 1958, ss 5, 101, 103, 107, 109, 140, 359
Migration Regulations 1994, r 2.41, Schedule 2

CASES

MIAC v Khadgi (2010) 190 FCR 248

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Home Affairs to cancel the first named applicant's Subclass 186 - Employer Nomination Scheme visa under s 109(1) of the *Migration Act 1958* (Cth) (the Act).
2. The delegate cancelled the visa on the basis that the applicants did not comply with sections 101(b) and 103 of the Act. The issue in the present case is whether that ground for cancellation is made out, and if so, whether the visa should be cancelled.
3. For the purposes of the Tribunal's jurisdiction, the only decision that is before the Tribunal is that with respect to the first named applicant (the applicant). The other visas were automatically cancelled as a consequence of that cancellation, not by a decision but by force of the operation of s 140(1) of the Act. As no decision was involved in the visa cancellation under s 140(1), the Tribunal has no jurisdiction with respect to the other applicants.
4. The applicant appeared before the Tribunal on 3 February 2022 to give evidence and present arguments. The Tribunal also received oral evidence from the second-named applicant. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages. The hearing was held during the Covid-19 pandemic and was conducted via Microsoft Teams video in accordance with the Tribunal's protocol.
5. The applicants were represented in relation to the review.
6. For the following reasons, the Tribunal has concluded that the decision to cancel the applicant's visa should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

7. Section 109(1) of the Act allows the Minister to cancel a visa if the visa holder has failed to comply with ss 101, 102, 103, 104, 105 or 107(2) of the Act. Broadly speaking, these sections require non-citizens to provide correct information in their visa applications and passenger cards, not to provide bogus documents and to notify the Department of any incorrect information of which they become aware and of any relevant changes in circumstances.
8. The exercise of the cancellation power under s 109 of the Act is conditional on the Minister issuing a valid notice to the visa holder under s 107 of the Act, providing particulars of the alleged non-compliance. Where a notice is issued that does not comply with the requirements in s 107, the power to cancel the visa does not arise. Extracts of the Act relevant to this case are attached to this decision.
9. In the present matter, the Tribunal is satisfied that the delegate had reached the necessary state of mind to engage s 107 and that the notice issued under s 107 complied with the statutory requirements.

Was there non-compliance as described in the s 107 notice?

10. The issue before the Tribunal is whether there was non-compliance in the way described in the s 107 notice, being the manner particularised in the notice, and if so, whether the visa should be cancelled. The non-compliance identified and particularised in the s 107 notice was non-compliance with sections 101(b) and 103 in the following respects:

- The applicant provided an answer on page 12 of her Employer Nomination Scheme visa application under the heading 'English test details' which relied on a TOEFL iBT Test Report Form which was considered to be bogus. As it appeared the applicant did not sit the TOEFL iBT Test, the results could not be attributed to the applicant and therefore the answer provided was considered to be incorrect.
- The delegate reasonably suspected that the TOEFL iBT Test purported to have been but was not issued in respect of the applicant. It was therefore considered to be a bogus document as defined by section 5(1) of the Act. As the bogus document was provided in support of the Employer Nomination Scheme visa application, the applicant appeared to have not complied with her obligations under section 103 of the Act.

11. In her response dated 19 July 2021 to the s.107 notice, the applicant conceded that she did provide incorrect information in her Employer Nomination Scheme (ENS) visa application regarding her TOEFL iBT score. She confessed that the photo in the TOEFL score report was not her own photo and she had a third-party imposter sit the test on her behalf even though the score report bore her name.
12. Based on the applicant's concession in her response to the s.107 notice, the Tribunal finds that there was non-compliance with s.101 by the applicant in the way described in the s.107 notice, specifically that she provided incorrect information in her 186 ENS visa application by providing an answer to her English test details which relied on her bogus TOEFL iBT Test Report form.
13. Bogus document is defined in section 5(1) of the Act as being one that the Minister reasonably suspects is a document that:

(a) Purports to have been, but was not, issued in respect of the person

14. The applicant has conceded in her response dated 19 July 2021 that she had a third-party imposter sit the test in her name. This resulted in the TOEFL iBT Test Report form being issued on her behalf, even though she did not obtain the results. This document therefore purported to have been issued in her name but was actually issued in relation to the third-party imposter.
15. The Tribunal therefore find that the TOEFL iBT Test Report form is a bogus document as defined by s 5(1) of the Act.
16. The Tribunal finds non-compliance with s.103 of the Act by providing a bogus document, namely her TOEFL iBT Test Report form in support of her 186 ENS visa application.

Should the visa be cancelled?

17. As the Tribunal has decided that there was non-compliance in the way described in the notice given to the applicant under s 107 of the Act, it is necessary to consider whether the visa should be cancelled pursuant to s 109(1). Cancellation in this context is discretionary, as there are no mandatory cancellation circumstances prescribed under s 109(2).
18. In exercising this power, the Tribunal must consider the applicant's response (if any) to the s 107 notice about the non-compliance, and have regard to any prescribed circumstances: s 109(1)(b) and (c). The prescribed circumstances are set out in reg 2.41 of the Regulations. Briefly, they are:

- the correct information
 - the content of the genuine document (if any)
 - whether the decision to grant a visa or immigration clear the visa holder was based, wholly or partly, on incorrect information or a bogus document
 - the circumstances in which the non-compliance occurred
 - the present circumstances of the visa holder
 - the subsequent behaviour of the visa holder concerning his or her obligations under Subdivision C of Division 3 of Part 2 of the Act
 - any other instances of non-compliance by the visa holder known to the Minister
 - the time that has elapsed since the non-compliance
 - any breaches of the law since the non-compliance and the seriousness of those breaches
 - any contribution made by the holder to the community.
19. While these factors must be considered, they do not represent an exhaustive statement of the circumstances that might properly be considered to be relevant in any given case: *MIAC v Khadgi* (2010) 190 FCR 248. The Tribunal may also have regard to lawful government policy. The relevant policy is set out in the Department's Procedural Advice Manual) PAM3 'General visa cancellation powers', which refers to matters such as the consequences of cancelling the visa, international obligations and any other relevant matters.

20. *Prescribed circumstances*

21. The prescribed circumstances that are to be considered before making a decision are set out in r.2.41 of the Regulations.

22. The correct information

23. The correct information is that the applicant did not sit the English test and therefore has no English language proficiency test results or details.
24. The Tribunal accepts that all other information in the application is correct.
25. The Tribunal gives this minimal weight in favour of not exercising its discretion to cancel the visa.

26. The content of the genuine document (if any)

27. The applicant did not sit the TOEFL iBT Test and therefore there is no genuine document for the Tribunal to consider.
28. By providing an incorrect answer based on a bogus document, the delegate was unable to correctly assess the application.
29. The Tribunal gives this factor significant weight in favour of its discretion to cancel the visa.

30. *Whether the decision to grant a visa or immigration clear the visa holder was based, wholly or partly, on incorrect information or a bogus document*

- 31. The incorrect information and the bogus document were both relied upon partly in the decision to grant the visa.
- 32. The visa application may have been considered differently if the applicant had provided the correct information with respect to her English ability at the time of the application.
- 33. The Tribunal gives this factor significant weight in favour of it exercising its discretion to cancel the visa.

34. *The circumstances in which the non-compliance occurred*

- 35. The applicant provided an incorrect answer on her visa application form and also provided a bogus TOEFL iBT Test Report form.
- 36. In her response to the Notice of Intention to Consider Cancellation (NOICC) dated 19 July 2021, the applicant's representative provided as follows:

37. Ms Zhang indicates to me that she admits that she did provide incorrect information in her ENS 186 visa application regarding her TOEFL iBT score. She confesses that the photo in the TOEFL score report was not her own photo and she had a third party imposter sat the test on her behalf, although the TOEFL score report bears her name Lixia Zhang. (sic)

- 38. In an accompanying statutory declaration, the applicant stated:

39. The main reason why I had provided incorrect answer and submitted bogus document just because of my ignorance of Australian laws. I did not have any knowledge of Australian laws or rules on providing the bogus document. Nor did I realize the seriousness of breaching the Migration Act and Regulations.

- 40. And further:

41. I sincerely regret my wrongful act, which may lead to my visa and my family members' visas all being cancelled. If my family's visas are to be cancelled, that will cause disastrous consequences to me and my family. My children's education and future would be ruined and scattered, for which I shall be held liable and I will feel sorry for the rest of my whole life. My children will hold life-long hatred towards me for such a blunder.

- 42. In this matter the applicant has deliberately procured a false document which she submitted and provided a false declaration to circumvent part of the requirements for the grant of her visa. Her excuse that she didn't know it was illegal in Australia is not accepted. The requirement for documents to be authentic is not a law peculiar to Australia. In any case, even if she had any doubt about this, the visa application provides clear warnings under the heading 'ENS/RSMS Declarations' that it is a 'serious offence' to give false or misleading information and that if false or misleading information is provided or bogus documents are provided either knowingly or otherwise any visa granted may be cancelled.
- 43. The applicant was visibly upset during the hearing and the Tribunal accepts that she is genuinely remorseful for the consequences of her actions. During the hearing she said that when she submitted the bogus English test that she was '*mesmerized by an evil spirit*'.

44. The applicant's actions were deliberate and fraudulent. It shows a blatant disregard for Australian immigration laws and the Tribunal gives this factor significant weight in favour of its discretion to cancel the visa.

45. *The present circumstances of the visa holder*

46. The Tribunal asked the applicant about her present circumstances. She said she and her husband run a Chinese restaurant in East Victoria Park and have 5 staff including herself and her husband.

47. In her response to the NOICC, the applicant's representative provided some information regarding her current circumstances. These are as follows:

- The applicant and her family have significant social, education and business ties and links to Australia and the community, having been here since July 2013;
- Their elder child at that time was 17 and completing his final year of schooling;
- Their younger child is now 6 and due to start school this year;
- These children will be punished for their parent's single mistake;
- It would be cruel to remove the children from Australia, particularly the eldest one who has had his formative years here;
- All their properties in China have been sold and their previous jobs no longer exist. It would be difficult to relocate back to China and start again;
- They started their own business from the end of 2018. It will be '*beyond their tolerance with heart-broken thinking to pack up and leave Australia suddenly in such a great rush*';
- The applicant claims their Chinese national IDs all have been revoked due to their Australian permanent residency status for years. Their passports, once expired '*in a couple of years' time*' will not be able to be renewed. The submission further stated: *There will be no retreat for restoring their Chinese citizenship and their identity.*

48. The Tribunal accepts that the applicant and her family would suffer financial hardship and may have had their Chinese national ID's revoked. The Tribunal also accepts the impact on the children and gives this some weight in favour of not exercising its discretion to cancel the visa.

49. *The subsequent behaviour of the visa holder concerning his or her obligations under Subdivision C of Division 3 of Part 2 of the Act*

50. This part of the Act contains the obligations to fill in an application form or passenger card correctly, not to provide bogus documents, to notify a change in circumstances where this makes an answer incorrect and to provide particulars of incorrect answers.

51. There is nothing to indicate that the applicant made any attempt at all to notify the Department of her incorrect answer on her visa application and the provision of the bogus document.

52. The Tribunal gives this factor weight in favour of its discretion to cancel the visa.

53. *Any other instances of non-compliance by the visa holder known to the Minister*

54. The Tribunal questioned the applicant about whether she had had any other known instances of non-compliance. The applicant replied she had not.
55. The Tribunal then asked if she was a director of the company Memory of Mandarin, her sponsor. She said she was.
56. The Tribunal then put to her pursuant to section 359AA of the Act the particulars of information that would be the reason or part of the reason for affirming the decision under review. That is, Memory of Mandarin had been subject to a sponsorship bar. Given she had denied any other instances of non-compliance and the significance of a sponsorship bar for a company, the Tribunal asked the applicant to comment on this information.
57. The applicant said if the Tribunal were to do a search now it would be 'all normal'. She discussed a lease dispute on previous premises and the trouble made for her by the previous landlord.
58. Some confusion then arose in the hearing as to whether Ms Zhang was a director of Memory of Mandarin and whether there had been a misunderstanding due to the interpreting.
59. The applicant's representative then clarified to the Tribunal that he represents Memory of Mandarin and the applicant is not a director of that company.
60. The Tribunal, without access to the appropriate ASIC searches is unable to clarify whether the applicant is/was a director of Memory of Mandarin and therefore accepts the applicant's representative's submission on this point.
61. The Tribunal accepts that there have been no other known instances of non-compliance by the visa holder and gives this factor some weight in favour of its discretion to not cancel the visa.

62. *The time that has elapsed since non-compliance*

63. The applicant was granted her visa on 29 May 2017 and provided the bogus document and incorrect answers on her application form which was submitted to the Department on 31 October 2016.
64. The Tribunal accepts that it is over 5 years since the events of non-compliance occurred, however, given that they were made with respect to the grant of a permanent residence visa the Tribunal does not accept that this ameliorates the behaviour.
65. The Tribunal finds this weighs in favour of its discretion to cancel the visa.

66. *Any breaches of the law since the non-compliance and the seriousness of those breaches*

67. There is no evidence before the Tribunal showing the applicant has been convicted of any other breaches of the law or sanctions imposed.
68. The Tribunal gives this some weight in favour of it not exercising its discretion to cancel the visa.

69. *Any contribution made by the holder to the community*

70. In her response to the NOICC the applicant has stated that she and her husband have been running their own business and employ 3-5 people per year. They state they pay taxes

which should be considered a form of contribution to the Australian economy and community.

71. The Tribunal was provided with several witness statements by members of the applicant's church regarding her involvement and contribution to the church. They also attended and were willing to give evidence. A former colleague of the applicant, together with the colleague's husband also provided a statement and were available to give evidence. The former colleague commented on the integrity and good character of the applicant. The Tribunal accepts that this former colleague has known the applicant for several years and holds her in high regard.
72. The Tribunal questioned the representative whether these witnesses would provide any evidence beyond that contained in their witness statements. He said they would not. As the Tribunal had no questions for these witnesses it had no need to question them.
73. The Tribunal accepts that the applicant and her family are active members of their church and provide a significant contribution to that community. The Tribunal also accepts the applicant and her family present themselves as hardworking to their friends and colleagues.
74. The Tribunal gives this factor some weight in favour of not exercising its discretion to cancel the visa.

75. *Other circumstances*

76. As stated above, the Tribunal may have regard to other circumstances, including those set out in departmental policy.

77. *Whether there are mandatory legal consequences, such as whether cancellation would result in the visa holder being unlawful and subject to detention and removal, or whether indefinite detention is a possible consequence of cancellation, or whether there are provisions in the Act which prevent the person from making a valid visa application without the Minister's intervention*

78. If the applicant's visa is cancelled, she will be an unlawful non-citizen and liable for detention under s.189 of the Act and removal under s.198 of the Act. Under s.197C of the Act, for the purposes of removal under s.198 it is irrelevant whether Australia has non-refoulement obligations or whether there has been an assessment of Australia's non-refoulement obligations.
79. The applicant may be subject to section 48 of the Act preventing her from applying for further visas, she may not be permitted to work if granted a temporary visa for a specified period and she may be held in immigration detention.
80. Whilst these are all serious consequences, the Tribunal does not give them weight in favour of not cancelling the visa because they are the intended consequences of cancellation. Even though the state of travel with the ongoing pandemic is less certain at the moment, it is unlikely the applicant and her family would be subject to indefinite detention particularly if they demonstrate they are making genuine attempts to return to China.

81. *Whether there would be consequential cancellations under s.140*

82. The applicant's husband and children are both secondary visa holders. The elder son has just completed his secondary schooling and the younger son is due to start primary school this year.

83. The Tribunal acknowledges the difficulty the children, in particular the elder son may have in assimilating back into Chinese culture and gives this some weight in favour of not exercising its discretion to cancel the visa.

84. The Tribunal accepts that there would be consequential cancellations which no doubt would cause psychological and emotional harm to the applicant's family members. The Tribunal gives this factor some weight in favour of not exercising its discretion to cancel the visa.

85. Whether any international obligations would be breached as result of the cancellation, such as non-refoulement obligations, family unit principles or the obligation to consider the best interests of the child

86. The applicant is a Chinese citizen and has made no claim for a protection visa. There is no evidence and no suggestion that removal of the applicant would lead to a breach of Australia's non-refoulement obligations.

87. The Tribunal considers this factor neutral in the exercise of its discretion.

88. Best interests of the child

89. Article 3 of the *Convention on the Rights of the Child* (Convention) requires that in all actions involving children, the best interests of the child shall be the primary consideration. In this case the applicant and her husband have two children, one of whom was born in Australia.

90. There is no suggestion that if the cancellation were to remain that this family would be separated. As noted by the delegate the applicant and her family are all Chinese citizens. Where they live is a question for the applicant and her husband to consider as a family.

91. Arguably it would be difficult for the applicant's two children to return to China having spent many years here. In treating the children's best interests as a primary consideration, the Tribunal finds that not cancelling the visa would be in the children's best interests. Having said that, the Tribunal does not consider that their interests would be significantly affected when comparing a possible life in China to that in Australia.

92. The Tribunal gives this factor no weight either in favour of its discretion to cancel or not cancel the visa.

93. Other considerations

94. The representative further said they may have to sell their current property in a hurry which could result in great financial loss.

95. The Tribunal accepts that this could be a risk for the family and accepts that the applicant could suffer financial hardship in the event that she needs to relocate the family back to China.

96. The Tribunal gives this factor a little weight in favour of its discretion to not cancel the visa.

97. The representative also submitted that because the applicant has been honest and cooperative in her attitude and response to the Department, this should be considered as being in her favour and that '*she deserves some credit for her brave act*'.

98. The Tribunal does not accept this argument. The only reason the applicant responded was because she was served with the NOICC outlining the circumstances which may lead to cancellation. She did not make any attempt to contact the Department regarding her

breaches and moreover she provided the incorrect information and bogus document intentionally. An admission when presented with evidence of the deliberate breach is not an act of bravery and deserves no credit.

99. Conclusion

100. The Tribunal has carefully considered all the relevant circumstances as outlined above. After considering all the factors that weigh in favour of it exercising its discretion to cancel the visa, the Tribunal finds that those factors outweigh the factors against its discretion to cancel the visa.
101. The Tribunal has decided that there was non-compliance by the applicant in the way described in the notice given under s 107 of the Act. Further, having regard to all the relevant circumstances, as discussed above, the Tribunal concludes that the visa should be cancelled.

DECISION

102. The Tribunal affirms the decision to cancel the first named applicant's Subclass 186 - Employer Nomination Scheme visa.
103. The Tribunal has no jurisdiction with respect to the other applicants.

Michelle East
Member

ATTACHMENT – *Migration Act 1958* (extracts)

5 Interpretation

- (1) In this Act, unless the contrary intention appears:
- bogus document**, in relation to a person, means a document that the Minister reasonably suspects is a document that:
- (a) purports to have been, but was not, issued in respect of the person; or
 - (b) is counterfeit or has been altered by a person who does not have authority to do so; or
 - (c) was obtained because of a false or misleading statement, whether or not made knowingly.

97 Interpretation

In this Subdivision:

application form, in relation to a non-citizen, means a form on which a non-citizen applies for a visa, being a form that regulations made for the purposes of section 46 allow to be used for making the application.

passenger card has the meaning given by subsection 506(2) and, for the purposes of section 115, includes any document provided for by regulations under paragraph 504(1)(c).

Note: **Bogus document** is defined in subsection 5(1).

98 Completion of visa application

A non-citizen who does not fill in his or her application form or passenger card is taken to do so if he or she causes it to be filled in or if it is otherwise filled in on his or her behalf.

99 Information is answer

Any information that a non-citizen gives or provides, causes to be given or provided, or that is given or provided on his or her behalf, to the Minister, an officer, an authorised system, a person or the Tribunal, or the Immigration Assessment authority, reviewing a decision under this Act in relation to the non-citizen's application for a visa is taken for the purposes of section 100, paragraphs 101(b) and 102(b) and sections 104 and 105 to be an answer to a question in the non-citizen's application form, whether the information is given or provided orally or in writing and whether at an interview or otherwise.

100 Incorrect answers

For the purposes of this Subdivision, an answer to a question is incorrect even though the person who gave or provided the answer, or caused the answer to be given or provided, did not know that it was incorrect.

101 Visa applications to be correct

A non-citizen must fill in or complete his or her application form in such a way that:

- (a) all questions on it are answered; and
- (b) no incorrect answers are given or provided.

103 Bogus documents not to be given etc.

A non-citizen must not give, present, [produce]* or provide to an officer, an authorised system, the Minister, the Immigration Assessment Authority, or the Tribunal performing a function or purpose under this Act, a bogus document or cause such a document to be so given, presented, [produced]¹ or provided.

107 Notice of incorrect applications

- (1) If the Minister considers that the holder of a visa who has been immigration cleared (whether or not because of that visa) did not comply with section 101, 102, 103, 104 or 105 or with subsection (2) in a response to a notice under this section, the Minister may give the holder a notice:
- (a) giving particulars of the possible non-compliance; and
 - (b) stating that, within a period stated in the notice as mentioned in subsection (1A), the holder may give the Minister a written response to the notice that:
 - (i) if the holder disputes that there was non-compliance:
 - (A) shows that there was compliance; and

*This wording applies to documents given, presented, produced or provided on or after 4 November 2014: Schedule 7 to *Counter Terrorism Legislation Amendment (Foreign Fighters) Act 2014* (No.116, 2014).

¹

- (B) in case the Minister decides under section 108 that, in spite of the statement under sub-subparagraph (A), there was non-compliance—shows cause why the visa should not be cancelled; or
 - (ii) if the holder accepts that there was non-compliance:
 - (A) give reasons for the non-compliance; and
 - (B) shows cause why the visa should not be cancelled; and
- (c) stating that the Minister will consider cancelling the visa:
 - (i) if the holder gives the Minister oral or written notice, within the period stated as mentioned in subsection (1A), that he or she will not give a written response—when that notice is given; or
 - (ii) if the holder gives the Minister a written response within that period—when the response is given; or
 - (iii) otherwise—at the end of that period; and
- (d) setting out the effect of sections 108, 109, 111 and 112; and
- (e) informing the holder that the holder's obligations under section 104 or 105 are not affected by the notice under this section; and
- (f) requiring the holder:
 - (i) to tell the Minister the address at which the holder is living; and
 - (ii) if the holder changes that address before the Minister notifies the holder of the Minister's decision on whether there was non-compliance by the holder—to tell the Minister the changed address.
- (1A) The period to be stated in the notice under subsection (1) must be:
 - (a) in respect of the holder of a temporary visa—the period prescribed by the regulations or, if no period is prescribed, a reasonable period; or
 - (b) otherwise—14 days.
- (1B) Regulations prescribing a period for the purposes of paragraph (1A)(a) may prescribe different periods and state when a particular period is to apply, which, without limiting the generality of the power, may be to:
 - (a) visas of a stated class; or
 - (b) visa holders in stated circumstances; or
 - (c) visa holders in a stated class of people (who may be visa holders in a particular place); or
 - (d) visa holders in a stated class of people (who may be visa holders in a particular place) in stated circumstances.
- (2) If the visa holder responds to the notice, he or she must do so without making any incorrect statement.

108 Decision about non-compliance

The Minister is to:

- (a) consider any response given by a visa holder in the way required by paragraph 107(1)(b); and
- (b) decide whether there was non-compliance by the visa holder in the way described in the notice.

109 Cancellation of visa if information incorrect

- (1) The Minister, after:
 - (a) deciding under section 108 that there was non-compliance by the holder of a visa; and
 - (b) considering any response to the notice about the non-compliance given in a way required by paragraph 107(1)(b); and
 - (c) having regard to any prescribed circumstances;
 may cancel the visa.
- (2) If the Minister may cancel a visa under subsection (1), the Minister must do so if there exist circumstances declared by the regulations to be circumstances in which a visa must be cancelled.